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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,238	09/24/2003	Dean W. Creighton	6123US	3563
30173	7590	09/26/2005	EXAMINER	
GENERAL MILLS, INC.			TRAN LIEN, THUY	
P.O. BOX 1113			ART UNIT	
MINNEAPOLIS, MN 55440			PAPER NUMBER	

1761

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,238

Applicant(s)

CREIGHTON ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claims 5,6,7,9,12,17,18,25,28,29,32,33,34,37,38,39,42,43,44 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is vague and indefinite. Does applicant intend for a Markush group or the protein includes all the proteins recited? The claim as written is confusing.

Claim 6 has the same problem as claim 5; if the protein already comprises wheat gluten and corn zein; it is not clear what is intended by the phrase " mixtures thereof". Also, the use of mixtures as plural is confusing because what other mixtures can there be? In claim 7, the phrase " the food product" is unclear because it is not known what food product the claim is referring to.

Claim 9 is vague and indefinite. The claims recites " the cooked cereal dough product in the form of a cooked cereal dough"; the product is already in the form of a cooked cereal dough. It is not clear what is intended by this language.

Claim 12 is vague and indefinite; the claim depends from claim 2 and further limits the inulin; however, claim 2 does not recite inulin as one of the fiber. Also, the specification discloses that inulin is a soluble fiber and claim 2 recites insoluble fiber.

Claim 17 has the same problem as claim 6.

Claim 18 is vague and indefinite; there seems to be a typographical error because the claim does not recite the claim from which it is depended from.

Claims 25, 28 and 29 have the same problem as claim 18.

In claim 32, it is not clear what is intended by the feature in parentheses.

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Claim 33 is vague and indefinite because the claim is a method claim; but , it is depended from claim 17 which is a product claim.

Claim 34 is vague and indefinite. It is not clear how the claim further limits the claims it depends from because the moisture content is out of the range claimed in both the method and the product.

In claim 37, the phrase " R-T-E cereal composition" is unclear because it is not known what RTE composition the claim is referring to. Also, the claim is a method claim , but it is depended from a product claim. It is not clear what is intended.

Claim 38 has the same problem as claim 37.

Claim 39 is vague and indefinite because claim 33 does not contain step B; thus, it is not known what step B the claim is referring to.

Claim 42 is vague and indefinite; it is not known what applicant is trying to claim because claim 20 does not recite any B-2 fructofuransose. Also, claim 20 is a product claim and claim 42 is a method claim.

Claim 43 has the same problem as claim 42.

Claim 44 is vague and indefinite because claim 19 does not have step D because it is a product claim; thus, it is not known what step d the claim is referring to. It is also unclear how the claim further limit claim 19.

Claim 45 has the same problem as claim 18.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-11,14-25,28-30,37,38, 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringe (5024996) in view of Sander.

Ringe discloses a cooked cereal dough and a method of preparing ready to eat cereals from the dough. The cereal contains at least 3g/oz-6g/oz of soluble fiber. The dough comprises about 20-80% of starchy cereal component, 10-25% soluble fiber, and insoluble fiber. The ratio of soluble to insoluble is .5 to 3:1. The source of insoluble fiber is selected from wheat bran, corn bran, rice bran etc.. The dough can also comprise .1-10% supplemental fiber such as carboxymethyl cellulose and .1-30% sugar. The fat content of the dough is less than 10% and is preferably free of externally applied fat or oil. The dough further comprises adjuvant materials such as high potency sweetener, about .1-2% salt and malt flavor. The cooked has a moisture content of 20-50%. The dough is formed into pellets which are partially dried and can then be flaked. The pieces are dried . The flakes can be toasted and partially puffed. The flakes can be sugar coated and/or topically vitamin fortified. The pieces have a water activities from about .1-20 reflecting moisture contents ranging from about 1-3%. The flakes

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have thickness of .018-.022 inch. (see col. 3 lines 43-53, col. 5 lines 15-55, col. 6l ines 3-54, columns 7-8 and the examples.

Ringe does not disclose adding protein in the amount and the type of protein claimed, the particle sizes of the fiber, puffing by frying, adding protein after cooking and the high potency sweetener as claimed.

Sander discloses a high protein cereal. The cereal has a minimum protein of 20%. The protein sources include soy protein, corn zein, protein from any recognized cereal sources and mixtures thereof. (see col. 2 lines 43-50)

It would have been obvious to one skilled in the art to add protein to the Ringe cereal as taught by Sander to make a high protein cereal to enhance the nutritional profile of the product. It would have been obvious to add protein in the amount taught by Sander or less depending on the nutrition desired. The proper amount can readily be determined through routine experimentation to obtain the most optimum product with respect to taste and nutrition. It would also have been obvious to add the protein after cooking depending on the nature wanted in the protein. If it is desired that the protein not be denatured, then it would have been obvious to add it after cooking. The type of protein selected would have been an obvious matter of preference depending on the taste, flavor and concentration of protein desired. It would have been obvious to one skilled in the art to determine the appropriate fiber size to give optimum texture. The size selected is an effective-result variable which would have within the determination of one in the art. It would have been obvious to use high potency sweetener to reduce the caloric content of the product. All the sweetener claimed are well known, it would have

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been obvious to one skilled in the art to select any known high potency sweetener. It would have been obvious to one skilled in the art to make puffed cereal because it is a well-known form of cereal product. Puffing by frying is well known in the art.

Claims 12-13,26-27,31-36, 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringe in view of Sander as applied to claims 1-11,14-25,28-30,37,38, 43-48 above, and further in view of van Lengerich et al.

Ringe does not disclose adding inulin, adding inulin in the sugar coating and the amount of inulin in the coating.

Van Lengerich et al disclose cereal products containing inulin as the soluble fiber; the inulin can be incorporated into the dough and topically applied. The inulin provides fiber fortified cereal with taste and texture that are indistinguishable from cereal without fiber. The inulin forms a clear, almost undetectable coating; thus, it is especially suitable for topical coating. (see col. 2 lines 40-62, col. 4 lines 29-31)

Ringe teaches adding soluble fiber; it would have been obvious to select inulin as the soluble fiber for the benefits taught by van Lengerich et al. It would also have been obvious to add inulin in the topical coating the advantage taught by van Lengerich. The amount used depends on the fiber content wanted and can readily be determined by one skilled in the art. Since inulin does not require cooking, it would have been obvious to add the fiber at any stage in the process; this is a matter of preference and is well within the determination of one skilled in the art.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 23, 2005


LIEN TRAN
PRIMARY EXAMINER

Group 1700